RECENT AMERICAN DECISIONS.

In the Court of Appeals of New York.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE MECHANICS' BANK, RESPONDENTS, *against* THE NEW YORK AND NEW HAVEN RAILROAD COMPANY, APPELLANTS.[1]

1. Where a corporation had stock at its disposal, and gave an agent power to sell it in market and issue certificates therefor, any person purchasing it of the agent in good faith and paying value, would acquire a perfect title to it, although the agent by a secret fraud intended the transaction for his own benefit, and used the funds he received.

2. But no right would in such case be acquired by one not dealing with the agent in good faith, or paying nothing for the stock; and the certificate given such person would be void.

3. Schuyler, the transfer agent of the New Haven Railroad Company, had no power to issue certificates for stock, except upon a transfer on the Company's books by a previous owner, and a surrender of that owner's certificate. He was merely an agent for making transfers, and had no general power to issue certificates.

4. Neither the board of directors, nor the whole body of the corporation, had power to create stock beyond the number of shares limited by the charter; and if the purchaser had paid full value to the transfer agent for certificates of stock issued beyond the number limited by the charter, the certificates would be void.

5. The plaintiffs in this action, holding certificates by transfer from one to whom they were fraudulently issued, and which represented no stock, acquire no rights as stockholders.

   1. The certificates were void in the hands of the first holder, because fraudulently issued.

   2. They were void in his hands, because issued without authority, there having been no surrender of a previous certificate and transfer, on the books, of actual stock.

   3. They were void, because the stock they professed to represent had no real existence, and under the charter of the Company, could not have any.

[1] We are obliged to the Reporter of the Court of Appeals for this important and interesting case. We regret that our space does not permit us to present the masterly argument of the appellants' counsel.—*Eds. Am. L. Reg.*

4. They were void, under all possible circumstances, so that no person can claim under them rights as a stockholder, or damages for the refusal to admit him to such rights.

6. The law will not require a corporation to violate its charter by creating an excess of stock to supply a spurious certificate; it will not punish it in damages for refusing to be guilty of such a violation.

7. By a purchase of a certificate of stock in a corporation with a power to transfer it, the purchaser, before transfer, acquires an equitable title to the vendor's stock; and if the vendor's title is open to no impeachment, a right to call upon the corporation to permit him to clothe himself with the legal title, by a transfer upon the books and a certificate; but he acquires no new or superior rights against the corporation.

8. Certificates of stock in a corporation are not negotiable instruments in the sense of the commercial law, so that by their endorsement and delivery to a purchaser in good faith, a title to the stock they profess to represent may be acquired, if it be spurious or void in the hands of the vendor.

9. The holder of a false or fraudulent certificate of stock cannot, by endorsing and transferring it to another, create a title to the stock it professes to represent, hostile to the corporation.

10. Certificates of stock in a corporation are not in any sense securities for money, but simply the muniments and evidence of the holder's title to his interest in the corporate property.

11. Nor are they in the nature of letters of credit, on the faith of which every one may act. Neither by their terms, nor by implication, do they request, invite, or guaranty credit, any more than the possession of property of any description, or choses in action.

12. An agent may clothe his act with all the *indicia* of authority, and yet the act may not be within the real or apparent power. The principal is responsible for the apparent *power*; not for the appearance of the *act*, if unauthorized.

13. The employment of an agent in situations of trust, is not such a recommendation by his principal as to render him liable to others whom the agent has deceived to their injury, except where the fraud is committed in doing the principal's business.

14. The doctrine of *estoppel* is not applicable in this case. The false certificate contains no representation or admission which any third party may accept as addressed to himself, and intended to influence his conduct.

This action was brought by the plaintiffs, in the Superior Court of the City of New York, to recover from the defendants eight thousand five hundred dollars, as the par value of eighty-five shares

of capital stock of the New York and New Haven railroad company. The plaintiffs alleged in their complaint, that on the 13th day of May, 1854, they loaned to Alexander Kyle $12,000 upon his promissory note, payable on demand, and accompanied by certificates for one hundred and ten shares of Harlem stock, and eighty-five shares of stock of the New York and New Haven railroad company, with a power to sell them as a collateral security for the loan; that they supposed the certificate to be, and received it as a genuine and valid certificate, and that its signature was in the handwriting of Robert Schuyler, the president and transfer agent of the company, and that it conformed in every respect to the genuine certificates of the company's stock; that Kyle had failed to pay the loan, and the plaintiffs had presented the certificate and power to transfer at the transfer office of the company, and demanded leave to transfer the shares, but the company refused to permit the transfer, and alleged that the certificate was spurious. The defence interposed was, that the certificate was falsely and fraudulently issued by Schuyler, and that it represented no genuine stock, and that prior to and at the time it was issued, the whole number of shares of stock which were permitted by the charter, had been actually subscribed for, paid in full, and certificates issued therefor, which were held by bona-fide stockholders.

The cause was tried before Mr. JUSTICE BOSWORTH, who, on the 22d of February, 1855, found, among other things:

"That Schuyler made and signed this certificate for eighty-five shares of the defendants' stock, and delivered it to Kyle to borrow money upon it for him the said Schuyler; that it did not represent any of the genuine stock of the defendants, being no part of the capital authorized by law. I also find that it was not issued for any lawful purpose whatever, but was a fraud on the part of Schuyler to raise money for his own private purposes." And upon the facts the conclusion of law, that the "defendants were liable to the plaintiffs for the market value of the stock, with interest, amounting to $8,072 68," for which sum judgment was given.

The judgment was appealed from by the defendants to the general term of the court, and there affirmed, June 27, 1855.

An Appeal was therefore brought to the Court of Appeals, and in the March Term, 1856, heard before that court. Present—

Hon. HIRAM DENIO, *Chief Judge;* Hon. ALEXANDER S. JOHNSON, Hon. GEORGE F. COMSTOCK, Hon. WILLIAM B. WRIGHT, Hon. WILLIAM MITCHELL, Hon. FREDERICK W. HUBBARD, *Judges.*

The cause was argued by

Messrs. William Curtis Noyes and *George Wood*, with whom was associated *Mr. Nicholas Hill, jun.*, for the defendants; and by

Messrs. E. S. Van Winkle and *Daniel Lord*, for the plaintiffs.

It was held under advisement until the 17th June, 1856, when the following unanimous opinion of the court was delivered by

COMSTOCK, J.—This is an action for damages, founded on a certificate for eighty-five shares of stock in the defendants' corporation, issued to Alexander Kyle, upon the security of which the plaintiffs loaned to that person a sum of money; and the first inquiry naturally is, what was the force and effect of the certificate in his hand? The mode of presenting this inquiry most favorable to the plaintiffs, is to consider it as free from the difficulty that there was no power in the corporation, its board of directors, or any of its agents, to create the shares of stock in question. Assuming that the corporation had stock at its own disposal, and that Robert Schuyler, as agent, had full power to sell it in market, and issue the proper certificates therefor, it is clear that any person dealing with him in good faith, and paying value, would become entitled to all the rights and privileges of a stockholder, although the agent, by a secret fraud, intended the transaction to be for his own benefit, and used the funds which he received for his own private purposes. In such a case, the acts of the agent being such as the corporation was competent to perform, and strictly within the powers delegated to him, upon principles entirely familiar, the law would not permit third persons to suffer by a secret abuse of the trust.

But it is equally clear that no rights would be acquired by a party not dealing with the agent in good faith, and receiving a certificate of stock without paying any value therefor. To say that the original holder of such a certificate could not be admitted to a participation with the genuine and bona-fide stockholders in the

property, franchises, and revenues of the corporation, is a proposition so plain that it needs only to be stated. Such was the situation of Alexander Kyle, the original holder of the certificate now in question. To what extent he was implicated in the frauds of Schuyler is not material. The certificate is admitted to have been issued fraudulently, and he paid nothing for it. On this ground it was, in his hands, spurious and void; and this is a conclusion which is reached without calling in question the power of the corporation to create the stock, or of Schuyler, as agent, to issue the proper evidence thereof to a purchaser in good faith.

The certificate in the hands of Kyle was also void, for the reasons which will now be mentioned: 1. Schuyler, as the agent of the company, had no power to issue a certificate for shares of stock, except upon the conditions precedent of a transfer on the books by some previous owner, and the surrender of that owner's certificate. He was the transfer agent merely, and his powers were expressly limited to that department of the business of the corporation. He had no general certifying power, nor any power at all to certify, except as *incidental* to a transfer of stock by its owner to some one else; and as an incidental power it could only be exercised upon the conditions named. 2. Neither the board of directors by whom Schuyler was appointed agent, nor the whole body of the corporation, had power to create the stock which the certificate issued to Kyle professed to represent; and if the stock itself could not be brought into existence by the whole power of the corporation, the the certificate issued as the evidence of its existence, and the right of the holder thereto, was necessarily void. Upon the premises last stated the conclusion would be the same, even if Kyle had paid to the transfer agent the full value of the stock. He could purchase stock of any person who owned it, but he could not, under any conditions, obtain it from the corporation or its agents, because there was none to be had, and none could be created.

Thus far I do not understand that my conclusions differ essentially from the views of counsel who have argued the cause for the plaintiffs; and if I was not mistaken in regard to the general scope of this argument, they conceded the further result, that the plaintiffs,

holding the certificate by transfer from Kyle, have no rights as *stockholders*, merely for the particuler reason that the stock cannot exist under the charter; the essential ground of the action in the view of the counsel, being the injury sustained by dealing upon the faith of the false representation of stock which the certificate contains. The opinions, however of the judges in the court below, are before us for examination, as well as those of eminent lawyers who have not appeared upon the argument; and I think it is proper to refer to these opinions for the purpose of bringing into view all the theories upon which it has been supposed the plaintiffs' rights depend.

Mr. Justice Hoffman, in the opinion pronounced by him, holds that the certificate was not void as transcending the powers of the corporation in the creation of stock and issuing certificates therefor, or those delegated to Schuyler as the transfer agent. He, therefore, considers the obligation to be one which the defendants can perform, and ought to perform, according to its terms. He admits that the effect of an over-issue is to increase the number of shares, but not the actual capital; and according to his view, the spurious certificates are to be made good by a reduction in the actual value of those that are now genuine. He holds, therefore, that the defendants were bound to admit the plaintiffs as stockholders, and to register their shares on the books accordingly; and that this suit depends purely and simply on the non-performance of that duty, after being requested to perform it. "Without a demand," he says, "and refusal to transfer, there would be no *ground of action whatever.*"

Directly opposed to these views are those of Chief Justice Oakley. He holds the certificate utterly void, because it transcended the powers of the transfer agent, whose commission, he thinks, was special, and not general; and if the action depended on the validity of the certificate, he says, the following questions would have to be answered:—1. Whether the plaintiffs, as *bona fide* holders, could acquire any rights under it superior to those of Kyle, in whose hands it was void? And 2. Whether the plaintiffs can be considered as *bona fide* holders?

As to the last point, he inclines to think that the plaintiffs were bound to see that Schuyler, as agent, did not exceed his special powers, and, therefore, if they chose to deal in the stock without inquiring as to that fact, they took the certificates from Kyle at their peril. But the learned Chief Justice, nevertheless, holds the defendants liable, on the ground that the certificate was a false representation that Kyle held stock when in truth he did not. He thinks that Schuyler, the agent, had an implied authority from the company, to make such a representation—an authority resulting from his constant habit of issuing certificates in the same form in the course of the regular business of the corporation. If, as he assumes, the certificate was void, tested simply by the authority given to the agent, and if, as he also assumes, the plaintiffs were bound to take notice of the want of authority,—with deference, it appears to me, that they are affected by the same considerations when they change the grounds of complaint to misrepresentation and fraud. Can an agent's authority to misrepresent in the course of a dealing be inferred, when it is admitted he has no authority to enter into the dealing at all?

Justices Bosworth and Slosson, if I do not misunderstand them, both admit that there was no power in the corporation to create the shares which the certificate professes to represent, and that the instrument, considered as a real representative of stock, was void for that reason; thus discarding the only ground upon which, in the opinion of their brethren, the action can be maintained. They, nevertheless, held that the suit is not founded upon the notion of misrepresentation and fraud, thus as distinctly rejecting the theory of the other. They appear to me to have found a middle ground of liability, which is perhaps fairly expressed in the following language of Justice Bosworth:—"The certificate," he says, "so far as any inferences can be drawn from its terms or appearance, purports to be, and is, as much the act of the defendants, as any certificate that has been issued by the company representing genuine stock. The plaintiffs took it, believing it to be what it purports to be; and their action is based on the theory that, as between them and the defendants, it is in judgment of law *the act of the defendants:* and

that the defendants are *estopped* from asserting the contrary, so far as the question of their liability for refusing to reimburse to the plaintiff the amount of their loan to the extent of the value of the stock is concerned." And again he says,—"The action is based on the assumption, so far as the right to be compensated in damages is concerned, that the company has given *an assurance* that Kyle owned the stock which the certificate represents stood to his credit on its books." The reasoning by which these results are reached, is in substance, that the act of Schuyler in issuing the certificate, was within the apparent scope of his powers, and therefore, although the contract was void because it transcended all the powers of the corporation, and it was impossible to be performed for the same reason, the defendant must, nevertheless, make it good *in damages* upon an *assurance* that it was valid, the assurance being a part of the contract itself. I confess my own impression to be, that this reasoning is too refined. Admitting that the agent acted within the scope of the power delegated to him by the board of directors, I do not clearly see how certificates of stock which they themselves had no authority to issue, void in their origin and under all circumstances, can be made the basis of a liability ruinous to the genuine stockholders, by turning the spurious instruments into a *promise* or *understanding* that the stock in fact existed.

The extreme difficulty which has been encountered in endeavoring to find a principle on which to rest the action, may be further illustrated by reference to the professional opinions which have been submitted to our examination. In one of them—certainly entitled to the very highest respect, the reasoning of which, I think must have been in substance, approved by Mr. Justice Hoffman—it is claimed that all the over-issued certificates are valid, so far as the question of corporate power is concerned; that the multiplication of shares did not increase the capital stock, but merely reduced the value of the shares; that the acts of Schuyler in issuing such certificates, were done within the scope of his authority as agent; and as a conclusion from these premises, that all the holders in good faith who had not already received new certificates in their own names, were entitled to receive them, and so to be admitted to all the rights

and privileges of stockholders. In another of these opinions, distinguished by great acuteness and force of reasoning, the clear and emphatic concession is made, that the defendants have no corporate right to create a valid title to a single share of stock beyond the prescribed number; that the corporation, being prohibited from issuing more than thirty thousand shares, was, by necessary consequence, forbidden to recognize as a part of its stock, any share known to have been issued contrary to that prohibition, and consequently, that the directors might refuse to recognize all shares which could be clearly traced to an origin in the over-issue. In respect to all such shares, it is claimed however, that compensation in damages must be made by the corporation to the innocent holders who, by dealing in them, have suffered pecuniary loss. The issue of false certificates, it is insisted, was a failure of *corporate duty*, an act of *negligence* by the corporation, for which it is liable to the party injured. The company, it is also said, is bound by an *estoppel* in favor of the innocent shareholder, and must either recognize him as a stockholder, or respond in damages as a wrong-doer for withholding his apparent right.

If those who assert that this action can be maintained had been able to agree upon a reason for that opinion, there would be fewer propositions to discuss than I shall feel obliged to examine.

I have already stated in general terms, my own conclusion to be on the side of the invalidity of the so-called spurious shares, upon the ground of a want of corporate power to create them; and I will now give some further expression to my views on that question. By the charter of this railroad company, its capital stock was limited to $3,000,000, to be divided into shares of $100 each. It is admitted that the whole capital was subscribed and paid in, and that certificates of stock were issued, representing the 30,000 shares actually subscribed and paid for. Now, if it is plain, as all concede, that the capital could not be increased beyond the $3,000,000, it seems to me equally plain that no more than 30,000 shares could be created. Both are unalterably fixed by the charter; the capital, by expressing the aggregate amount, and the number of shares by expressing the amount of each. The whole capital is divided into

shares of $100 each, and the mathematical result is 30,000 in all. Viewing the question, therefore, as one of abstract power, nothing appears to be wanting to a complete demonstration that additional shares could not be created. There is under the charter no more capacity to increase the nominal capital by multiplying the shares to an indefinite extent, than to increase the real capital by an actual subscription, indefinitely beyond the specified limit.

But it is important to observe that the question has other relations than those which belong to it as one of simply capacity and power. The 30,000 shares of original stock subscribed and paid for by the persons to whom the genuine certificates were issued, belonged to them in their individual right, and were as much their separate and individual property as any other possession which they could acquire. The entire capital was represented in the property and franchises of the corporation, and the owner of each share was entitled to a fixed and unalterable proportion of that capital. And from this it follows that any attempts to create a greater number of shares by the issue of additional certificates, is not only a violation of the organic law of the corporation, but a direct invasion of the contract between it and each holder of its original stock. Now, while it cannot be denied that the value of every share may be reduced by misfortune or accident in the management of the business of the corporation, or by the neglect and misconduct of its agents acting within their acknowledged powers, it is equally plain that this result cannot be affected by a change in the fixed proportion which each share bears to the aggregate number. It has been said, that the limitation of the capital and the number of shares was imposed from considerations of public policy alone. This is not so. Those who asked for the charter, and proposed to invest their private capital in the enterprise which it contemplated, required such a limitation for their own protection; and every individual who subscribed and paid for shares of stock, must be deemed to have done so relying upon the charter for the safety of his investment.

The conclusion to which I am brought upon the question, is not impeached by the consideration (if such is the fact) that there are

shares and certificates of stock beyond the original limit, which cannot be traced to an over-issue by the fraudulent agent of the Company. I know not how the facts may be in this respect, nor is it material to the argument. The corporation may be compelled to respond to the holders of certificates amounting in the aggregate to more than its capital, because it cannot distinguish those which are spurious and those which are genuine. Thus the number of shares to be recognized may be practically increased, not for the reason that all over-issues are not void, but because, in a given instance, the corporation cannot show that the shares claimed are of that character. No question of this kind arises in the case before us.

I have also stated in general terms, as one of my conclusions that the certificate issued to Kyle was void in his hands, upon the more special ground that the agent could not certify, except upon conditions which did not exist in respect to that transaction. I now observe further, that a third person dealing with Kyle, and taking from him a transfer of the certificate, doubtless had reason to suppose that it had been duly issued. Whether a dealing with him under that belief created new rights against the corporation I shall presently examine. But Kyle himself dealt directly with the agent of the Company, and he knew the conditions had not arisen on which the power to certify depended. He knew this, because he surrendered no previous certificate, and had no transfer on the books or otherwise from any actual shareholder. Now, I do not understand it to be claimed, on the part of the plaintiffs, that the acts of the agent in issuing the spurious certificates were within any actual power which the corporation ever attempted to confer upon him, nor that all persons proposing to deal in the stock were not chargeable with a knowledge of the extent and limit of his authority. He was known to be a transfer agent merely, of existing and genuine shares, and in that character his name was signed to the certificate in question and all others. What is claimed I understand to be precisely this: That the false certificates being regular on their face, and the same in form as those which are genuine, presented to third parties dealing in them all the appearances of having been

duly issued, although, in fact, the agent had no authority to issue them, and although the exact extent of his authority was known. But these appearances were known to be false by those who dealt directly with the agent; and with that knowledge it is not pretended that they can assert any claim against the corporation. Such was the situation of Kyle.

It is as well in this connection as any other, to notice a special feature of the transaction, which I think imparts neither strength nor weakness to the plaintiffs' case. The facts, as they appear in the finding of the judge, are, that Kyle received the certificate not for his own but the agent's use, and having negotiated with the plaintiffs a loan by pledging it as security, paid the proceeds of the transaction over to the agent. But these facts were not known to the plaintiffs. They dealt with Kyle as the owner. Upon that theory they have a right now to rely, and I understand them to do so. It is the best the case will admit of. If they choose to take the facts as they actually are, and to regard Kyle as a negotiator merely between them and the fraudulent agent of the corporation, they would then stand in the position of an immediate dealer with the agent, receiving from him a certificate of stock issued without authority; and this position, as I have shown, would be fatal to their claim. They justly prefer to be regarded, and I do regard them, as third parties, dealing with Kyle as the apparent owner of stock.

In order to keep in view the exact conditions of the general question, I think it proper to state the conclusions which I consider thus far established. They are as follows: 1. The certificate was void in the hands of Kyle, the first holder, because it was fraudulently issued, and he paid nothing for it. 2. It was also void in his hands, because issued by an agent without authority, there being no surrender of a previous certificate, and no transfer to him on the books of actual stock; and this want of authority was known to him. 3. It was void, because the stock it professed to represent had no existence, and could not exist under the charter of the Company, all the powers of the corporation in the creation and issue of stock being exhausted. In respect to the conclusion last mentioned, it

must be, and I think is conceded, that as a further result the certificate is void under all possible circumstances, so that no person, in whatever situation, can claim under it the rights of a stockholder, or damages on the ground of a refusal to admit him to such rights.

As the law will not require the defendants to violate their charter by creating an excess of stock to supply this spurious certificate, so it will not punish them in damages for refusing simply to be guilty of such violation. I consider this result so necessary and so evident, as not to require further discussion.

I will proceed, however, to a more particular examination of the plaintiffs' rights as the transferrees of Kyle; and, giving them the most favorable view of the case, will consider the certificate as void in his hands only on the ground that it was issued fraudulently, without consideration, and without any authority contained in *the terms* of Schuyler's appointment as transfer agent. In this view the defendants' corporation is regarded as *competent* to recognize the certificate; and if they are bound to do so, they must respond in damages upon their refusal. The question, therefore, will be,—Are they so bound? or, to state it in another form,—are the plaintiffs in a situation to assert any rights against the Company which Kyle, their assignor, did not possess?

By the charter of this corporation, the shares of its capital stock were made transferable in such manner and in such places as the by-laws should direct; and the by-laws declared that all transfers should be made in the transfer-book, kept at the proper office, and where a certificate of the stock had been issued, that the same should be surrendered prior to the transfer being made. The certificate now in question, as all others, declared on its face the same conditions. This certificate has, in fact, never been surrendered, and no such transfer ever has been made. The plaintiffs on making their loan to Kyle, took from him an assignment and power of attorney in blank, but paid no regard to the fundamental conditions on which alone a legal title to the stock could be transfered. Of these conditions, of course they had notice.

I am aware it is common to deal in this manner in the stock of the corporate companies, and I do not say that any rule of law or

of public policy is violated by it. The dealer undoubtedly acquires an equitable right to the stock of his vendor, and if the vendor's title is open to no impeachment, he has a right to call upon the corporation to clothe him also with the legal title by permitting a transfer to himself on its books, and to demand a new certificate in his own name. But the question here is, not whether the purchaser is clothed in equity with all the rights of the seller, but whether by a transfer not made according to the laws of the corporation itself—in short, whether his title is good when that of his vendor is good for nothing.

So, too, it is common to deal in this manner with respect to obligations of every description. If extreme caution is exercised, the purchaser will inquire of the maker of the obligation, and procure his admission of its validity and his assent to the transfer; and having done so, an estoppel will arise in his favor, not because he has invested his money in the purchase, but because he purchased after procuring such admission or consent and upon the faith thereof. Where there is no estoppel of this sort to rely upon, then the question whether the transferree of an obligation, apparently sound and from the apparent owner, any better right to enforce it than his assignor had, depends on the nature of the obligation itself. The general and familiar rule is, that he does not. If the instrument has negotiable qualities, then he may. In the case of negotiable instruments, the legal title passes by mere endorsement or delivery. When they are not negotiable, an equitable title is all that can be acquired; and this suggests the further observation, that as between equities merely, the prior one, as a general rule, prevails. The prior equity, as well as the law, is in favor of the party who made the obligation, if for any good and valid reason he ought not to be bound by it. The principle is so familiar that authorities need not be cited.

It seems to me, therefore, that we are brought directly to the question whether certificates of stock in the defendants' corporation are to be regarded as negotiable instruments, in the sense of the commercial law, so that by their endorsement and delivery to a purchaser in good faith, a title to the stock they profess to represent

may be acquired, although in the hand of the vendor they are spurious and void, and although the company itself has never recognized the transfer. This question, I think, must be answered in the negative. They contain, in the first place, no words of negotiability. They declare simply that the person named is entitled to certain shares of stock. They do not, like negotiable instruments, run to the bearer, or to the order of the party to whom they are given. They commence, it is true, with the words, "be it known," but such words have no tendency to show that they possess the quality claimed for them. A phraseology quite similar may be found on bonds and other instruments which no one ever thought to be negotiable.

But aside from the absence of any language of these certificates, which can impart to them a negotiable character, both the laws of the corporation and the certificates themselves contain special restrictions, which seem to me to put this question at rest. I do not suppose that a corporation, without something very extraordinary in its charter, can place such restraints upon the sale of its stock that the individual holder may not transfer as good a title in equity as he himself possesses, by any mode of assurance good upon general principles of law. But if a natural person has an undoubted right so to express the terms of his obligation that it shall not be negotiable in the commercial sense, or in any sense which can give to the purchaser a title superior to that of his vendor, I see no reason to doubt that corporations possess the same right. Have the defendants so expressed themselves in these certificates of stock? I think they have. They have distinctly declared, both in their by-laws and on the face of the certificates, that shares can be transferred only on the books, and on the surrender of the evidence of the previous owner's title. If an illustration were wanting of the value of such a restriction, it is furnished in the present case.. But whatever its value, the restraint is lawful in itself, and one which the corporation had an undoubted right to impose. I do not say that it prevents the owner of stock from selling his shares by an outside transfer, so that his vendee will acquire in equity his own rights; but to say that the holder of a false and fraudulent certificate, by endors-

ing and delivering it to another person, can *create* a title hostile to the corporation itself, would be to deny the restriction any meaning or effect whatever.

I have examined attentively the authorities cited upon the question, but do not find that the doctrine contended for has in them the least support; in the case of *Cortright* vs. *The Commercial Bank of Buffalo*, 20 Wend. 91; S. C. in error, 22 Wend. 347, it was held that an action of assumpsit will lie against the corporation in favor of the assignee of a stock certificate, for refusing to permit a transfer on the books. This and the class of cases to which it belongs prove, that a transfer not made according to the charter or by-laws of a corporation confers upon the transferree, in an equitable sense, the title of the previous owner; that being thus clothed with the equitable title, it is the duty of the corporation to permit him to take a legal transfer on the books; and that the law will imply an assumpsit for the performance of that duty. For a breach of this duty, actions of assumpsit and case have been indifferently maintained. In principle, the remedy should have been a special action on the case. Such was the opinion of Chief Justice Nelson in the case referred to; but he adds, "It being once settled (that assumpsit will lie), there is no occasion for disturbing it." It is only material to observe that the *assumpsit* is not in the certificate itself, and so passing by endorsement and delivery to the transferree, but is implied *after the transfer* from the duty of the corporation to clothe the equitable owner with the legal title. Such cases, so far from tending to show that a dealer in certificates acquires rights better than those of the person with whom he deals, seem to me to justify quite an opposite conclusion. They necessarily assume that the change of title is incomplete until the proper transfer is made on the books.

In the case of *Fatman* vs. *Loback*, 1 Duer, 354, no question arose involving the rights of the corporation. The decision is directly opposed to those of Chancellor Walworth in *Stebbins* vs. *Phœnix Fire Ins. Co.* 3 Paige, 350, and my own impression is that it cannot be sustained. I find in it nothing which can affect the question I am considering. The case was disposed of upon principles which were

not asserted as having any peculiar application to dealing in stocks or negotiable securities. The case of *Stoney* vs. *The American Life Insurance and Trust Company*, 11 Paige, 635, only held that the *negotiable* security of a corporation, appearing on its face to have been duly issued, was valid in the hands of a *bona fide* holder, although in fact issued contrary to law. The case of *Delafield* vs. *The State of Illinois*, 2 Hill, 159, related to State bonds, payable to bearer and strictly negotiable. Such securities are sometimes called stocks, but a confusion of terms should not involve principles in obscurity.

In the case of *Fisher* vs. *The Morris Canal and Banking Company*, 3 Am. Law Reg. 423, the question was, whether the bonds of a railroad corporation, payable to bearer, issued for the purpose of raising money, with interest coupons attached, also payable to bearer, were negotiable in such sense that a purchaser for value took them free from any equities between the company and the seller. The decision was in favor of the purchaser, and I fully concur in the doctrine. The distinction between such a security and a stock certificate, which, by its very terms, is not negotiable, and which is not a security for money at all, it seems to me is too plain to escape observation.

These are the only authorities cited in favor of the doctrine contended for. It is quite evident that they have no tendency in that direction. I will now mention some which are decisively the other way. In the case of the *Union Bank of Georgetown* vs. *Laird*, 2 Wheaton, 390, the stock was transferable only on the books of the corporation. The precise propositions decided were, that no legal title to shares could be acquired except by a transfer made according to the requirement, and that the equitable title of the transferree was subject to all the rights of the corporation against his assignor. The same doctrine was held by Chancellor Walworth, in *Stebbins* vs. *Phœnix Fire Insurance Company*, 3 Paige, 350.

In the State of Connecticut there have been a series of cases going still further. The registry on the books, when required by the charter or by-laws of a corporation, is deemed the originating

act in the change of title to stock, and a transfer not so made is regarded as ineffectual for any purpose, 2 Conn. 528; 3 ib. 544; 5 ib. 246; 6 ib. 552. So rigorous a doctrine has not been followed elsewhere; and I think the established rule now is, that a transfer of stock not made in the manner prescribed, is nevertheless valid so as to pass in equity all the rights of the seller, but no greater. See further, Angell and Ames on Corporations, 352, 353, 3d ed., where the rule is stated and the cases cited.

Looking at the question upon principle, I am not aware of anything in the nature or uses of this kind of property, which requires an application of the rules which belong to negotiable securities. Stocks are not like bank bills, the immediate representative of money, and intended for circulation. The distinction between a bank bill and a share of bank stock, is not difficult to appreciate. Nor are they like notes or bills of exchange less adapted to circulation, but invented to supply the exigencies of commerce, and governed by the peculiar code of the commercial law. They are not like exchequer bills and government securities, which are made negotiable either for circulation or to find a market. Nor are they like corporation bonds, which are issued in negotiable form for sale, and as a means for raising money for corporate uses. The distinction between all these and corporate stocks, is marked and striking. They are all in some form the representative of money, and may be satisfied by payment in money at a time specified. Certificates of stock are not securities for money in any sense, much less are they negotiable securities. They are simply muniments and evidence of the holder's title to a given share in the property and franchises of the corporation of which he is a member. The primary use and design, I must be allowed to say, of this species of property is to afford a steady investment for capital, rather than to feed the spirit of speculation. I am aware that people will speculate in stocks, as they sometimes do in lands, and there is no law which absolutely forbids it; but such I am persuaded, is not the use for which we should hold them chiefly intended.

The question is capable of some further elucidation by attending to the rules which have been settled in regard to the transferability

of other instruments and the effect of transfer. A certificate of stock is in some respects like a bill of lading or a warehouse or wharfinger's receipt. Each is the representation of property existing under certain conditions, and the documentary evidence of title thereto. They are all alike transferable by endorsement and delivery, and the title to the property thus represented passes by such transfer. So far they resemble each other, but there are distinctions to be noted. Bills of lading and wharfinger's receipts are commercial instruments, and their transferability, or as it is sometimes termed, their "*quasi* negotiability," depends on the custom of merchants and the conveniences of trade. Certificates of stock are not commercial instruments; and the title to the property they represent passes in equity only by endorsement and delivery, where by any law or rule of the corporation the transfer is required to be made on the books. With these resemblances and these distinctions, if a bill of lading is not negotiable in the sense which must be contended for in the present case, there is much greater difficulty in affirming that such a quality belongs to a stock certificate.

In the great case of *Lichbarrow* vs. *Mason*, 2 Term Rep. 63; 5 id. 367, it was held that the consignor of goods had lost his right of stoppage *in transitu*, when the consignee, holding the bill of lading endorsed in blank by the consignor, delivered it to a third person who received it in good faith and made advances upon it. This has been the settled rule ever since. But in such cases, it is to be observed, the legal title to the goods has vested by the sale and consignment to the consignee, subject only to the peculiar and anomalous right of arresting their delivery in the event of insolvency. If, therefore, before this right is exercised, the consignee transfers the bill of lading to another person, who takes it in good faith and for value, the latter acquires the title which his vendor had at the time of the transfer, and which the consignor cannot afterwards take from him by stopping the goods before they have reached their destination. In this doctrine, which was settled after a very remarkable contest in the courts of England, is contained all the negotiable quality that belongs to a bill of lading, and it requires but little discrimination to see that this is not negotiability in any just sense of

that term. On the other hand, it has been held by the Supreme Court and the late Court of Errors of this State—*Saltus* vs. *Everett*, 15 Wend. 475; 20 id. 257 — that a bill of lading covering goods shipped, but made without the owner's authority, cannot affect the owner's title, into whatsoever hands the instrument may come. So it has been lately held in the English Queen's Bench, *Gurney* vs. *Behrend*, 3 Ellis & Bl. 622, that if a bill of lading is misappropriated, as if it be endorsed in blank by the consignor and sent to his correspondent, but not intending thereby to have it transferred, and the person receiving the bill transfers it for value, the title to the goods is not affected by the transaction. Lord Campbell, in delivering the judgment in that case, very explicitly denied the negotiability of such instruments. In *Corill* vs. *Hill*, 4 Denio, 323, Chief Justice Bronson had occasion to say—"If the master of a vessel, after signing a bill of lading to the owner of the goods, should give one to another person, it would confer no rights upon those who were misled by the false and fraudulent paper." See also, *Thompson* vs. *Dominey*, 14 Mees. & W. 402; *Zachrisson* vs. *Ahman*, 2 Sand. 68; *Commercial Bank of Rochester* vs. *Cole*, 15 Barb. 506.

It is conceded that Kyle, the first holder of the certificate in question, could assert no title to the stock it appears to represent, and that in his hands it was spurious and void for all the reasons which have been mentioned. Before its transfer to the plaintiffs can be admitted to confer any better title upon them, it must be shown to have not only all the negotiable qualities of a bill of lading, but others also which that instrument does not possess.

Testing this question, therefore, in any conceivable mode, whether by the express terms of these certificates, by their general nature and character, by the authority of adjudged cases, or by the most favorable analogies, I have no hesitation in saying that the doctrine contended for is entirely without foundation. It is mainly by assuming for these instruments the possession in a greater or lesser degree of the peculiar qualities of negotiable securities, that the plaintiffs claim to have acquired by transfer better rights than their assignor had; and as that assumption fails, this claim falls to the ground.

It was also said on the argument that these certificates of stock are in the nature of renewal letters of credit, on the faith of which any one might act; and upon this idea it was insisted that the defendants are in some way bound by the obligation in the hands of the plaintiff. I am unable to see the analogy suggested. By attending to the mere definition of a letter of credit, it will be seen there is no resemblance. Thus, in McCulloch's Commercial Dictionary, it is defined to be "a letter written by one merchant or correspondent to another, requesting him to credit the bearer with a sum of money." Or, to take the further definition of another author, it is "an open or sealed letter from one merchant in one place, directed to another in another place, requiring him that if the person therein named or the bearer of the letter shall have occasion to buy commodities or want moneys, that he will procure the same or pass his promise, bill or other engagement for it, on the writer of the letter undertaking that he will provide him the money for the goods, or repay him by exchange, or give him such satisfaction as he shall require." 3 Chitty Com. Law, 336; Bouvier's Law Dictionary.

Now, while it may be the *effect* of a stock certificate to give the holder a credit, its terms do not request, invite or guarantee it. So the possession of property of any description, or of the evidence and muniments of title thereto, in their effect give to the possessor a credit with other men. In this sense, every chose in action invites a credit in favor of him who holds it, and so do the title deeds of his real estate. Innocent parties may deal with him and be deceived. They may lend their money and lose it. Nothing more than this can be said of a certificate of the ownership of stock in a corporation. Regarded as a *promissory* instrument, imposing obligations to be performed by the artificial person who makes it, it is like any other chose in action, except as greater restrictions may be placed upon its transfer and sale. Regarded as a muniment of title, merely, it is like any other instrument by which title is manifested. But to say that, like a letter of credit, it contains a request express or implied, addressed to any one in particular, or to the community in general, to deal with or advance money to the holder,

or that it contains any assurance or guarantee, addressed to the dealer, of the safety of the transaction,—is in my judgment to confound plain and long settled distinctions.

I will now briefly examine the validity of the plaintiffs' title in another aspect, still keeping out of view, however, the absolute want of power in the corporation to create the stock in question. It has been mentioned as one of the reasons why the certificate was void in the hands of Kyle, that Schuyler, the agent, was not acting within the scope of his powers when he issued it. The full effect of this particular objection upon the plaintiffs' rights as the transferrees of Kyle, has not been considered. And I observe now in the first place, that if upon a vague theory of negotiability (already examined) they could overcome the difficulties arising out of the fraud of the agent toward the company as his principal, and out of the want of consideration, this objection would still have to be removed. It is obvious upon a moment's reflection, that negotiability can impart no vitality to an instrument executed under a power, where the agent has exceeded his actual or presumptive authority. Whoever proposes to deal with a security of any kind appearing on its face to be given by one man for another, is bound to inquire whether it has been given by due authority; and if he omits that inquiry, he deals at his peril.

It is not denied that the plaintiffs, in taking the certificate in question, were chargeable with notice of the extent and limit of the powers of Schuyler as transfer agent. All that is claimed in their behalf is, that his act in issuing it was apparently and presumptively although not actually, within his authority. Upon this ground it is urged that, according to the rules which govern the relation of principal and agent, the defendants are bound in some way to make the obligation good. The extent of the authority, it is admitted, the plaintiffs knew, or were bound to know; but it was not known, they say, that the act done was not within such authority.

There are in the books many loose expressions concerning the distinction between a general and special agency. The distinction itself is highly unsatisfactory, and will be found quite insufficient to solve a great variety of cases. It is not profitable to dwell upon

that distinction. Underlying the whole subject there is this fundamental proposition, that a principal is bound only by the authorized acts of his agent. This authority may be proved by the instrument which creates it; and beyond the terms of the instrument, or of the verbal commission, it may be shown that the principal has held the agent out to the world in other instances as having an authority which will embrace the particular act in question. I know of no other mode in which a controverted power can be established. But in whichever way this is done, it cannot be limited by secret instructions of the principal on the one hand, nor can it be enlarged by the unauthorized representation of the agent on the other. These principles, I think, are elementary.

But suppose an agent is authorized by the terms of his appointment to enter into an engagement, or series of engagements, on behalf of his principal, and while the appointment is in force he fraudulently makes one in his own or a stranger's business, but in the form contemplated by the power, and which he asserts to be in the business of his employer, by using his name in the contract, can the dealer rely upon that assertion and hold the principal, or is he bound to inquire and to ascertain at his peril whether the transaction is not only in appearance but in fact within the authority? According to the authority of the Supreme Court of this State, in the case of *The North River Bank* vs. *Aymar*, 3 Hill, 262, he can. There the agent was authorized to draw and endorse notes in the name and for the benefit of his principal. He drew various notes, which in their appearance were within the power, but really had no connection with the business of his principal. The plaintiff,—Bank,—which had the letter of attorney in its custody, discounted them; and it was held they could be recovered against the principal. Justice Cowen and Chief Justice Nelson delivered opposing opinions, in which the question is very elaborately discussed. The decision is reversed in the Court of Errors; but the case is not reported in that court. If the reversal proceeded, as I suppose it must, upon a doctrine directly opposite to that held by the Supreme Court, then the case certainly suggests a limit of great importance to the liability of principals, the recognition of which would be decisive of the

present controversy. So, in *Grant* vs. *Norway*, 10 C. B. 665, it was held, after full discussion, that the master of a ship signing a bill of lading for goods not actually shipped, was not to be considered the agent of the owner of the vessel, so as to make him responsible to the one who made advances upon faith of the bill. That is a strong case. The master of the ship is general agent of the owners as to all matters within the scope of his duty and employment, and has unquestionable power to sign bills of lading for goods shipped; and every bill asserts, as it did in that case, that the goods are received on board. The act, therefore, judged by its appearance and the representation of the agent was strictly within the power. But the principal was held not to be liable; because it was not so in fact. The doctrine of that case was affirmed by the English Court of Exchequer in *Hubertsey* vs. *Ward*, 8 Exchequer Rep. 380; S. C. 18 Eng. Law and Eq. Rep. 551, and again with great deliberation by the Common Pleas in *Coleman* vs. *Riches*, 29 Eng. Law and Eq. Rep. 323.

The distinction is not always attended to, between the apparent *powers* of an agent and his *acts* apparently but not really within the power. An agent's apparent powers are those which are confirmed by the terms of his appointment, notwithstanding secret instructions, or those with which he is clothed by the character in which he is held out to the world, although not strictly within his commission. Whatever is done under an authority thus manifested is actually within the authority; and the principal is bound for that reason. But it is obvious that an agent may clothe his act with all the *indicia* of authority, and yet the act itself may not be within the real or apparent power. The appearance of the power is one thing; and for that the principal is responsible. The appearance of the act is another; and for that, if responsible, I think the remedy is against the agent only. The fundamental proposition, I repeat, is that one man can be bound only by the authorized acts of another. He cannot be charged because another one holds a commission from him, and falsely asserts that his acts are within it.

Cases may often arise which to a casual observation might appear to be within the principles stated, but which really are not. Thus, an

agent may be authorized to give notes for his principal in order to raise money to be used in the business of the latter. A third person may inspect the power, advance the money in good faith, and the agent appropriate it to his own use. In such a case, I should hold the principal responsible, not because the act of the agent *appeared* to be within the authority, but because the authority actually included the transaction. A power given to an agent to borrow money, upon notes or otherwise, implies that the money may be paid to him, and so the whole transaction is strictly and literally authorized. But suppose the power to give the note is on its face conditional. It then has no existence until the condition has been fulfilled. To a confiding dealer who believes that the agent would not do an improper act, the note will certainly carry the appearance of due authority; but if it turns out that the conditions had not occurred on which the exercise of the power depended, then he was trusting to the representation of the agent, and, I think, must look to him alone. As the principal never authorized the transaction at all, he is bound neither by the contract nor the representation. If not by the former, then it is extremely plain he is not by the latter.

Connected with the observations last made, it is proper, though perhaps scarcely necessary, to notice another doctrine which has been much urged, under some disguise it is true, but in effect that the very employment of an agent in situations of trust and confidence is a recommendation and certificate of his character, so that if he deceives others to their injury, the principal must make compensation. If by this it were only meant that where the agent is guilty of fraud or deceit in doing his employer's business, the latter is responsible, the doctrine is entirely true. (Story's Agency, sec. 482, and cases cited.) But in all its other aspects and forms of statement the doctrine is unsound. If the agent in dealing for his principal, and within the power, commits a fraud, the principal is liable, not upon the ground that he holds the agent out to the world as an honest man, but because the fraud enters into and is a part of the authorized transaction. If the agent deals dishonestly for his principal, it is in a just sense a wrong done by the principal himself,

although unknown and unauthorized. But the dealing itself must be authorized. If the transaction is not within the power, then as the dealing is imputed to the agent personally, so necessarily are all the circumstances attending it, and all the means and instrumentalities by which the fraud is consummated. The power of the agent to charge his principal by doing a wrong, must be traced directly to his authority; and it cannot be referred to an increased facility for imposing on the credulity of others derived incidentally from his appointment to a situation of trust. If the fraud consists in an over-representation of his power to act, by which others are drawn into dealing with him, then it is a self-evident proposition, that a man can no more enlarge than he can create a power by such a representation.

Applying the principles which have been stated in this branch of the discussion, they are decisive against the plaintiffs. If the corporation had held stock, and Schuyler had been the agent to sell it and issue certificates therefor, a sale and a certificate issued by him would have been valid against his principals, although by a private fraud he appropriated the proceeds to his own use. The transaction with the purchaser in all its branches, the sale, the certificate, and the payments to him of the money, would have been not only apparently but actually within the powers. His misappropriation of the proceeds would have been a mere breach of trust relating to money in his hands, and upon the principles of trust, his intention to misappropriate would not affect an innocent party.

But such were not the relations between Schuyler and the corporation, nor was he held out to the world as standing in such relations. He had no power to sell stock at all, and none to issue certificates, except as incidental to a sale between existing stockholders; and then it depended on the conditions precedent to a transfer on the books, and a surrender of a previous certificate for the same stock. The authority which he assumed to exercise, therefore, confessedly never had an actual existence, and, within the principles which have been stated, it never had an apparent existence. His appointment, in its very terms, which all dealers are supposed to have been acquainted with, did not include his acts; and the re is no

pretence that the authority it conferred was ever enlarged by any holding out or recognition of such acts. All that can be said in behalf of the plaintiffs is, that the certificate itself implied a representation or assurance that it was issued within the power,—in other words, that the conditions on which the power depended had been fulfilled. Even this representation when closely scanned, was no more than an inference of the dealer that, as the agent had no authority to certify except under conditions, those had been in fact performed. But the conclusive answer is, that the defendants never authorized any such representations. To say that they had, would be simply saying that they authorized the certificate, because the representation was contained in that and existed nowhere else, and this would be assuming the very point in dispute. The representation of assurance, therefore, if such we call it, was the unauthorized act of the agent. Upon this the plaintiffs naturally no doubt relied; and so, doubtless, the dealer did upon the bill of lading, in *Norway* vs. *Grant* (*supra*), which contained an express declaration that the goods were shipped. The precise difficulty is that they relied upon the appearance which the agent gave to the act, and by that they were deceived. They were under no deception as to the power in its real or apparent scope. Testing the question by any rule of agency with which I am acquainted, the defendants were not bound by the transaction.

If any one of the main conclusions at which I have arrived in this discussion is sound, there is no remaining ground on which the action can be sustained. Viewing the certificate in question as unaffected by the want of power in the corporation to create or recognize the stock it appears to represent, we have seen that it was void in its origin, because issued without consideration and in fraud of the defendants' rights.

We have also seen that those objections were equally fatal to its validity in the hands of the plaintiffs, as the assignees of the first holder. It has been further shown that the instrument imposed no obligation or duty on the defendants upon the more special ground that the act of Schuyler, in issuing it was not within any authority which they ever, in fact or in pretence, conferred upon him as their

agent; and, if this objection is sound, the further observation has been made, and, I doubt not, assented to, that it cannot be overcome by allowing to the certificate the transferable quality and immunity which belong to negotiable paper. Unless these conclusions can be overthrown, they are subversive of the entire ground of action.

The notion of estoppel which has been advanced in the argument, not as a distinct ground of liability, but blended with other principles, deserves by itself very little consideration. Every corporate, as well as private obligation or instrument, undoubtedly contains an express or implied representation of facts, upon the faith of which innocent parties may deal. If it be a promissory note, value received is a fact expressed or implied; and although the fact may not be so, the maker is bound to pay the obligation in the hands of an innocent third party, not upon any theory of estoppel, but upon principles peculiar to that species of security. Where the instrument is not negotiable, the maker may, as I have heretofore observed, be affected by an estoppel *in pais*, if it be transferred upon his representation of its validity, and the dealer acts upon that representation. But to say that he is estopped by the instrument itself simply because he made it and a third party has dealt with it, is only asserting in another form, that fraud, mistake, duress, illegality, want of consideration, or want of authority when the act is one of pretended agency, is not denied. This would subvert the settled maxim that the assignee or purchaser takes subject to all equities between the original parties. It would also subvert another maxim which belongs to the doctrine of estoppel itself. That maxim is, that an admission or representation is no estoppel in favor of a stranger to whom it is not made, and whose conduct it was not expressly designed to influence (3 Johns. Cases, 101; 6 Hill, 534; 3 id. 215; 7 Barb. 644). The result is, that before the principles of estoppel can be applied to the controversy, it must be asserted and proved that a certificate of stock, differing from all other modes and forms of obligation used in the transactions of men, contains within itself a representation or admission of facts which any dealer, however remote from the original parties, may accept as

addressed to himself, and intended to influence his conduct. For such a doctrine, no authority has been cited, and it has no foundation in any principle hitherto recognized.

As I have once mentioned, a theory of the action prominently urged upon the argument, assumed that the corporation had no power to create more than the original three millions of stock, or to issue certificates for a greater amount. That this is so, I think I have demonstrated. But, assuming these premises, it was then insisted that the certificate in question was therefore false, and that the action would be on this ground. The essential principle of the case in this view would be, that, as the defendants, for want of corporate powers, *cannot* recognize the certificate as the true representation of stock, and so respond to the engagement which it implies, they must make compensation in damages for the injury sustained in consequence of the representation regarded as false.

Now, by presenting the *falsehood* alleged in the certificate and the consequent injury as the ground of the action, a plausible appearance is given to this view of the case. But it is essentially illogical. The falsehood, viewed in this aspect alone, really consists in a want of corporate power to enter into the engagement; and that, instead of being *a cause* of the action is a serious difficulty to be removed. If an agent, irrespective of all questions arising out of the special limitations of his own authority as derived from the board of directors, cannot bind a corporation, or affect the rights of its geniune stockholders, by the *terms* of an over-issued certificate, there is great difficulty in affirming that the result may be indirectly reached by thus changing the ground of liability. If a corporation has received the benefit of its agent's misrepresentation or fraud in a transaction unauthorized by its charter, I will not say there is no mode of redress. I am not an advocate of the doctrine that a corporation cannot be responsible for a wrong, or may not in some form, be liable when its agents enter into engagements which its charter forbids, and the benefits of the transaction can be traced to its stockholders, or are held for their benefit. But such is not the case before us. The stockholders of this corporation are in nowise connected with the misconduct of their agent, nor have they been

benefited by it. It is true they trusted him, but it is not alleged that they had not ample reasons for so doing. Conceding that Schuyler's authority, derived from his appointment as transfer agent by the board of directors, might apparently include his fraudulent acts, the difficulty is only removed one step further back. The directors themselves were not the corporation, but its agents only. It may be granted that they wielded all the corporate powers; but among those powers the one in question is nowhere to be found. It did not even have *apparent* existence. The argument concedes this absolute want of power; and I have yet to discover the principle on which the genuine stockholders can be made liable in any form for an attempt to exercise it by any of their agents for their own individual benefit.

But such a point need not be determined. Before reaching this ultimate question, the action fails upon the special grounds which have been examined at large. Conceding to the defendants the power, if they so elect, to recognize and perform the obligation under which their agent attempted to place them, then, if they are not liable upon their refusal to do so for the reasons which have been stated, it is extremely plain they are not if the power to do so is wanting. To say that their agent's false representation of stock which did not and could not exist, can render them liable to dealers in the spurious certificates, when they would not be bound to recognize the same dealers if the stock in fact existed, and the representations were therefore true, involves a fallacy so evident that it needs only to be suggested. This is the error in the argument which places the defendants' liability on the simple ground that the certificate is a fraudulent representation of non-existing stock, the alleged fraud consisting in the statement of that falsehood alone. In this view of the controversy, the other fatal objections to the action are overlooked. If I have been successful in showing that the plaintiffs can have no title to the shares of stock mentioned in the certificate, for the particular reasons which have been given, then manifestly the non-existence of the shares, or the false assertion of their existence, is no ground of complaint.

In concluding, it is proper to say that the case of *The Bank of*

Kentucky vs. *The Schuylkill Bank* (Parsons' Select Eq. Cases, 180) has not been overlooked. That case has been much relied on as an authority in point upon the general question before us; and it is certainly true, that in the opinion delivered on pronouncing the judgment, some principles were stated scarcely reconcilable with the conclusion to which we have come. In that case, however, the suit was brought by the corporation against its own fraudulent agent, after it had recognized the spurious issue under an enabling act of the legislature; and in many essential circumstances the controversy differed from the present one. After a careful consideration, we are unable to yield to that decision any controlling influence upon the question now to be determined. We are all of opinion that the judgment should be reversed, and a new trial granted. Ordered accordingly.

In the Superior Court of Cincinnati—General Term, Nov. 1855.

MATILDA CAMPBELL, ADMINISTRATRIX OF ROBERT CAMPBELL, DECEASED, PLAINTIFF IN ERROR, *vs.* PATRICK ROGERS ET AL.[1]

1. An action cannot be maintained by the administrator, or other personal representative of a deceased party, under the Statute of March 25, 1851, requiring compensation for causing death by *wrongful act, neglect,* or *default,* when the act causing the death occurred without the State.
2. That Statute applies only to those cases, where the *wrongful act, neglect,* or *default,* causing death, has occured within the State.

Robert Campbell, the plaintiff's intestate, while employed by the defendants, as engineer on board the steamboat "Fort Henry," was drowned in the Ohio River, in October 1854. When the accident occurred, the boat was navigating the river without the jurisdiction of the State of Ohio; and the deceased fell overboard while on duty. It is charged in the petition that he lost his life by the negligent conduct of the officers and crew of the steamboat, who in their efforts to save him were not only careless, but by their want of

[1] This case is reported in 2 Handy's Rep. 110, and we are under obligation to the Reporters for the sheets.